

AG Contract No.: KR04-1685TRN
ADOT ECS File No.: JPA 04-063
Project No.: CM-SCT-0(012)A
Project: Pima Road Multi-Use Path
Section: Via Linda to Inner Circle
TRACS No.: SS499 01C
Budget Source Item No.: N/A
City's Contract No.: 2005-040-COS

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF SCOTTSDALE

THIS AGREEMENT is entered into 20th April, 2005, pursuant to Arizona Revised Statutes § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF SCOTTSDALE, ARIZONA, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
4. A project within the boundary of the City and the State's right-of-way within Loop 101 has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for their approval.
5. The City, in order to obtain federal funds for the construction of the project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA, including actual construction engineering and administration costs (CE).
6. The interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

NO. 27475
Filed with the Secretary of State
Date Filed: 04/20/05

Janice K. Brewer
Secretary of State

By: Danny D. Groenewald

7. The work encompassed in this Agreement consists of the construction of a multi-use path adjacent to Pima Road from approximately 500 feet north of Via Linda to approximately 800 feet south of Via de Ventura, hereinafter referred to as the "Project". In addition to the Project, the City has requested the State to construct part of a waterline from approximately 363 feet south of Via Linda to approximately 265 feet north of Via Linda, all at City's expense. The estimated cost is as follows:

TRACS No. SS499 01C

*** Total Estimated Cost of the Project** **\$ 2,202,002.00**

Federal Aid Funds @ 94.3% of 1,455,239.00 (capped) \$ 1,372,290.00

City Funds @ 5.7% of 1,455,239.00 (capped) \$ 82,949.00

Estimated City Funds @ 100% including waterline construction costs \$ 746,763.00

Total Estimated City Funds **\$ 829,712.00**

***(Includes 15% CE and 5% project contingencies)**

8. The parties hereto agree and acknowledge to the following conditions: 1) The amounts referenced in this Agreement are subject to change; 2) the estimated amounts can change substantially; and, 3) The parties will perform their responsibility consistent with the Agreement.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. Be the authorized agent for the City, and all at City's expense, to perform certain work and prepare certain documents required by the FHWA to qualify certain highway, bridge and railroad grade crossing projects for and to receive federal funds. Such work may consist of, but is not specifically limited to, the review and approval of the City prepared environmental documents, the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; right-of-way related activities (when specifically authorized by, for and on behalf of the City, and at no cost to the State) and such other related tasks essential to the achievement of the objective of this Agreement.

b. Submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for construction.

c. If such Project is approved for construction by FHWA and the funds are available for construction, hereby agree to be the authorized agent for the City. With the aid and consent of the City and the FHWA, proceed to advertise for, receive and open bids, and subject to the concurrence of the City and the FHWA, enter into a contract with a firm on behalf of the City to whom the award is made for the construction of the Project. Such Project to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the City MAG standard details as amended, and the Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation.

d. Enter into a Project Agreement with FHWA on behalf of the City covering the work encompassed in said construction contract and will request the maximum federal funds available, including construction engineering and administration costs. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

e. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City shall:

a. If such Project is approved for construction by FHWA and the funds are available for construction, hereby designate the State as authorized agent for the City. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. Should unforeseen conditions or circumstances increase the cost of said work such that a change in the extent or scope of the work called for in this Agreement becomes necessary, the City shall be obligated to incur and will pay for said increased costs.

c. Agree the cost of the analysis and works covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed and determined by FHWA.

d. Prior to the solicitation of bids, agree to deposit funds with the State in an amount equal to the difference between the total cost of the work provided for in this Agreement and the amount of federal aid (capped) received.

e. Acquire the necessary rights-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bid.

f. Remove from the proposed right-of-way all unauthorized obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, and hereby certifies that all obstructions and unauthorized encroachments have been or will be removed there from, prior to the start of construction.

g. Not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the rights-of-way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

h. Provide oversight and contract management for the Project.

i. Upon completion of construction, be responsible to provide for, at its own costs and as an annual item in its budget, proper maintenance to the work described in this Agreement under section 1.7.

j. Upon completion of construction, the City shall provide at the time of final billing, a letter from the Project Manager or other responsible engineering official, that the work on this Project is completed and considered acceptable to the State's assigned Project Manager or other responsible engineering official and that the federal project is ready to be closed.

III. MISCELLANEOUS PROVISIONS

1. The parties to this Agreement agree that the State of Arizona shall be indemnified and held harmless by the City for the vicarious liability of the State as a result of entering into this Agreement. Each party to this Agreement is responsible for its own negligence.

2. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said Project and related deposits or reimbursement, except any provisions for maintenance provided by the City shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the Project construction contract, upon

thirty (30) days written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the City, the State shall in no way be obligated to maintain the said Project.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. **Non-Availability of Funds.** Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007
FAX: (602) 712 7424

City of Scottsdale
City Manager
3939 Civic Center Blvd.
Scottsdale, AZ 85251

10. Pursuant to Arizona Revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF SCOTTSDALE

STATE OF ARIZONA

Department of Transportation

By

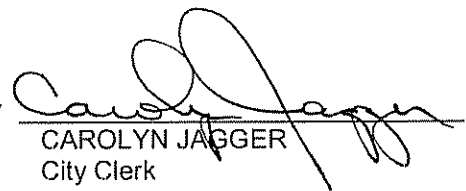

MARY MANROSS
Mayor

By


SUSAN TELLEZ
Contract Administrator

ATTEST

By


CAROLYN JAGGER
City Clerk

RESOLUTION NO. 6592

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING CONTRACT NO. 2005-040-COS, AN INTERGOVERNMENTAL AGREEMENT, BETWEEN THE CITY OF SCOTTSDALE AND THE STATE OF ARIZONA TO ADMINISTER THE CONSTRUCTION OF THE PIMA ROAD MULTI-USE PATH SECTION: VIA LINDA TO INNER CIRCLE.

WHEREAS, Arizona Revised Statutes Sections 11-951 et seq. provide that public agencies may enter into intergovernmental agreements for the provision of services, or joint or cooperative action; and

WHEREAS, Arizona Revised Statutes Section 48-572 authorizes the City to enter into intergovernmental agreements for transportation improvements; and

WHEREAS, Article 1, Section 3-1 of the City Charter of the City of Scottsdale authorizes the City to enter into intergovernmental agreements with various public agencies; and

WHEREAS, federal funds are available to the City of Scottsdale from the U.S. Department of Transportation Federal Highway Administration; and

WHEREAS, the City of Scottsdale desires the State of Arizona through the Arizona Department of Transportation to act as lead agency in administering the funds for construction of the Pima Road Multi-Use Path Section: Via Linda To Inner Circle with the City of Scottsdale,

BE IT RESOLVED by the Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

SECTION 1. The City Council hereby authorizes and directs the Mayor to execute, on behalf of the City of Scottsdale, Intergovernmental Agreement, Contract No. 2005-040-COS, between the City and the State of Arizona.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this ~~22nd~~ day of March, 2005.

City of Scottsdale
An Arizona municipal corporation

By: Mary Mahross
Mary Mahross, Mayor

ATTEST:

Carolyn Jagger
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

Joseph R. Bertoldo for
Joseph R. Bertoldo
City Attorney

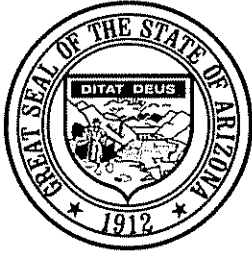
APPROVAL OF THE CITY OF SCOTTSDALE ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the ARIZONA DEPARTMENT OF TRANSPORTATION, and the CITY OF SCOTTSDALE, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 3rd day of March, 2005.



City Attorney



**ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION**

MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: (602) 542-8859
Fax: (602) 542-3646


**INTERGOVERNMENTAL AGREEMENT
DETERMINATION**

A.G. Contract No. KR04-1685TRN (**JPA 04-063**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED April 12th, 2005.

TERRY GODDARD
Attorney General



JEFFREY T. MURRAY
Assistant Attorney General
Transportation Section

JTM:dgr
Attachment
900081